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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,971	03/31/2004	Joseph S. Beasley	BEASLEY.1150	5905
24038	7590	01/10/2006	EXAMINER	
MARTIN & ASSOCIATES, LLC P O BOX 548 CARTHAGE, MO 64836-0548			RADI, JOHN A	
		ART UNIT		PAPER NUMBER
				3641
DATE MAILED: 01/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/813,971	BEASLEY, JOSEPH S.	
	Examiner	Art Unit	
	John A. Radi	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 July 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-6,8,9,11-14,16,22 and 23 is/are rejected.
- 7) Claim(s) 7,10 and 15 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 March 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/31/04</u> .	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16, and 22-23, are drawn to a projectile w/ expandable members, classified in class 102, subclass 510.
- II. Claims 17-21, are drawn to a method of making a bullet, classified in class 86, subclass 54.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product described by invention 1 can be made by a process not including the step of forming a cylindrical hole at the front of the body but rather assembling the projectile from a multitude of pieces which in their totality form a cavity portion.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Martin on December 15, a provisional election was made without traverse to prosecute the invention of the projectile, claims 1-

16, 22-23. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 6, 8, 9, 11-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Frick (US1318858).

Frick teaches a projectile comprising: a substantially rigid body portion (4); at least one deployable member (blades 10) that is in a retracted position (figure 3) within the body portion when the projectile is fired; and a nose piece (17, 5, and 25 comprise the nose) coupled to a front of the body portion, whereby upon impact the nose piece (17) moves inside of the body portion (figure 2), thereby moving the at least one deployable member (10) to a deployed position (figure 2).

With respect to the shear member on the nose piece that is sheared off on impact, Frick teaches the use of a shear member (25) which is used to keep the deployable members and the nose piece in place up to the point of impact with the intended target (page 2 lines 24-28). The examiner interprets the shear bolt (25) the plunger (17) and tip of the projectile (5) as all comprising the Nose portion of the

projectile and therefore the shearing of the bolt (25) is interpreted to being the shearing member of the nose as described in applicant's claim.

With respect to claim 5, wherein the deployable members comprise a plurality of knife members with a sharp edge (Frick item 10, and page 1 line 90).

With respect to claim 6, wherein the nose (17) is friction fit with a cylindrical bore (7), see page 1 lines 80-81 wherein the plunger communicates with the apperature of reduced diameter.

With respect to claim 8, 13 and 16, wherein the body comprises a portion of reduced diameter for receiving a sabot, the body portion around body member 16 is of reduced proportion with respect to base 20, and would be capable of supporting a sabot.

With respect to claim 9, a substantially rigid body portion (4), the body portion including an axial cylindrical hole (7) at a front of the body portion, the body portion further including first and second slots (8) on opposite sides of the body portion that extend from the axial cylindrical hole through the body portion; a first deployable knife (10) member that includes a first cutting edge that is in a retracted position (figure 1) inside the first slot when the projectile is fired; a second deployable knife (10) member that includes a second cutting edge that is in a retracted position (figure 1) inside the second slot (8) when the projectile is fired; and a nose piece (17) friction-fit into the axial cylindrical hole (7) at the front of the body portion, wherein the nose piece includes at least one shear member (25) that is sheared off when the nose piece contacts a target (page 2, lines 24-28 see above for full discussion), thereby causing the nose piece to

move inside of the body portion (figure 2), thereby moving the first deployable knife member in a deployed position with the first cutting edge extending outside the first slot, and thereby moving the second deployable knife member in a deployed position with the second cutting edge extending outside the second slot (figure 2).

With respect to claim 11 and 12 and 14, wherein the knife member comprises a raised member that has a thickness greater than that of the slot keeping the knife in the retracted position until the knife member is deployed, the pin (11) acts as the raised member upon which the knife member (10) rotates and is thicker than the slot (8) thereby keeping the knife inside the body (as opposed to allowing it to fall out), until the knife member is deployed by the plunger (17) and it also holds a portion of the knife member (10) inside the body when the knife is deployed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frick (US1318858). Frick teaches the invention as described above with respect to claim 1, however Frick does not teach the use of specific materials for the body portion, nose piece, or deployable members. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the materials claimed (bronze for body, plastic for nose, or steel for deployable members), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

Claims 7, 10 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached form PTO-892 for a complete listing of prior art which covers projectiles with deployable members.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Radi whose telephone number is 571-272-5883. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 571-272-6873. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John A. Radi
Patent Examiner
Art Unit 3641



Michael J. Carone
SPE 3641